

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District Massachusetts
Name of Movant Luis Beltran	Prisoner No. 23960-038	Case No. 02-2692 WGY
Place of Confinement FCC Coleman Medium, P.O. Box 1032, Coleman, Fl. 33521-1032		

UNITED STATES OF AMERICA

V.

LUIS BELTRAN

(name of person convicted)

MAGISTRATE JUDGE RBC

MOTION

1. Name and location of court which entered the judgment of conviction under attack **United States District Court, District of Massachusetts, One Courthouse Way, Boston, Massachusetts 02210-3002**

2. Date of judgment of conviction **December 12, 2002**

3. Length of sentence **One Hundred Eighty (180) Months**

4. Nature of offense involved (all counts) **Counts 1 & 3 : Conspiracy to affect commerce by robbery [18 U.S.C. §1951]; Counts 2 & 4 : Attempt to affect commerce by robbery [18 U.S.C. §1951]; Count 5 : Possession of a firearm in furtherance of a crime of violence [18 U.S.C. §924(c)(1)] Count 6 : Possession of semiautomatic weapon [18 U.S.C. §924(c)(1)]; Count 7 : Possession of a firearm by a convicted felon [18 U.S.C. §922(g)(1)]**

5. What was your plea? (Check one)

- (a) Not guilty ☐
 (b) Guilty ☒
 (c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Pled guilty to all seven counts of the indictment

6. If you pleaded not guilty, what kind of trial did you have? (Check one) **N/A**

- (a) Jury ☐
 (b) Judge only ☐

7. Did you testify at the trial? **N/A**

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

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9. If you did appeal, answer the following:

(a) Name of court United States Court of Appeals For The First Circuit

(b) Result Conviction and sentence were affirmed

(c) Date of result January 13, 2004

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

N/A

(a) (1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result _____

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Nature of proceeding _____

(3) Grounds raised _____

(5) Result_____

(6) Date of result _____

(2) Second petition, etc. Yes ☐ No ☐

N/A

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Denied Effective Assistance of Counsel

Supporting FACTS (state *briefly* without citing cases or law) Counsel failed to raise an Apprendi v. New Jersey, 147 L.Ed.2d 435 (2000) violation during sentencing and argue on appeal the four point enhancement for leadership role, without this fact being admitted to or found by a jury. In violation of the defendant's Sixth United States Constitution Amendment right.

(See attached Affidavit of Luis Beltran)

B. Ground two: Trial Court Denied Defendant's Fifth and Sixth United States Constitution Amendment Rights To Due Process of Law And Right To Jury Trial

Supporting FACTS (state *briefly* without citing cases or law): Trial court sentenced the defendant beyond the statutory maximum after the court's imposition of a four point enhancement for a leadership role, without this fact being admitted to or found by a jury.

(See attached Affidavit of Luis Beltran)

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law):

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D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Thomas F. Dunn, Esq., 401 Broadway, Suite 1502, N.Y., N.Y.
10013

(b) At arraignment and plea SAME

(c) At trial SAME

(d) At sentencing SAME

(e) On appeal SAME

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

N/A

(b) Give date and length of the above sentence: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? N/A

Yes ☐ No ☐

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

PRO SE

Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

November 22, 2004

(Date)

Luis Beltran

Signature of Movant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to AUSA John T McNeil, One Courthouse Way, United States Courthouse, Suite 9200, Boston, Massachusetts 02210, on this 22nd day of November 2004.

Luis Beltran
Luis Beltran, pro se.
Reg. No. 23960-038 C4
FCC Coleman Medium
P.O. Box 1032
Coleman, Florida
33521-1032

AFFIDAVIT OF LUIS BELTRAN

I HEREBY CERTIFY that the following is true and correct.

I Luis Beltran Reg. No. 23960-038 was sentenced on the 12th day of December 2002. During sentencing the Honorable District Court Justice William G. Young adopted the Presentence Report by the probation officer Tricia Marcy. In this report it recommended a four point enhancement for a leadership role under the United States Sentencing Guideline § 3B1.1(a). The report stated that I Luis Beltran acted as the leader, providing direction to Rodolfo Robles Perez, Julio Enrique Espinoza, and Jimmy Velasquez. My counsel objected to the enhancement, but failed to raise the objection under an Apprendi violation. In being a fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. The prescribed statutory maximum for Apprendi purposes is the maximum sentence a judge may impose **solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.** Blakely v. Washington, 159 L.Ed.2d 403, 413 (2004). I never admitted to being a leader nor was I afforded my right to a jury and have this fact proved beyond a reasonable doubt. The record will reflect and support my claim. This fact was never in my plea agreement and I objected to this finding in sentencing and on appeal. I am a pro se litigant with very little knowledge in jurisprudence, and in fact a non-english speaking immigrant. I accepted my responsibility to the offenses I was charged with, and entered into a plea agreement with the government, but I never admitted that I was a leader of the men that the presentence report alleged I was. My counsel failed to object under the Apprendi principles and prejudiced me by exposing me to a greater punishment beyond the statutory maximum sentence that the judge could have imposed.

"UNDER THE PENALTY OF PERJURY I hereby certify that the foregoing is true and correct." Executed on this 22nd day of November 2004.

November 22, 2004

Respectfully Submitted,

Luis Beltran
Luis Beltran, pro se.